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CHRISTOPHER C WINSLADE
MCANDREWS HELD & MALLOY
SUITE 3400
500 W. MADISON STREET
CHICAGO IL 60661

MAILED

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OFFICE OF PETITIONS

In re Application of	:
Gollnick, et al.	:
Application No. 10/657,785	:
Filed: September 8, 2003	:
Patent No. 7,826,818	:
Issued: November 2, 2010	:
Attorney Docket Number: 14206US03	:
	ON REQUEST FOR
	RECONSIDERATION OF
	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(d), filed January 3, 2011. Patentees believe that they should be accorded additional PTA of 1 day due to the Office not issuing the patent within three years.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment is **DISMISSED**.

On November 2, 2010, the instant application matured into U.S. Patent No. 7,826,818 with a patent term adjustment of one thousand one hundred eighty-nine (1189) days. The Office determined a patent term adjustment of 1189 days based upon 627 days of Office delay pursuant to 37 CFR 1.703(a)(1), 22 days pursuant to 37 CFR 1.703(a)(2), and 1111 days pursuant to 37 CFR 1.703(b), reduced by 549 days of Applicant delay pursuant to various instances of delay under 37 CFR 1.704(b) and 1.704(c)(8).

Patentees argues that the Office should have been assessed 1112 days of delay pursuant to 37 CFR 1.703(b), not the 1111 days presently accorded. Patentees' argument has been considered, but is not persuasive. 37 CFR 1.703(b) states, in part:

37 CFR 1.703(b)(1) sets forth, *in toto*:

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

It follows that the proper manner of calculating the RCE-cutoff is to terminate the over three year period on the day before the RCE was filed, since 37 CFR 1.703(b)(1) expressly states that the day on which the RCE was filed is not included in the over three year period.

Accordingly, at issuance, the Office properly entered 1111 additional days of patent term adjustment for the Office taking in excess of three years to issue the patent.

In view thereof, the correct number of days of patent term adjustment is **one thousand one hundred eighty-nine (1189) days**

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.



Anthony Knight
Director
Office of Petitions